



**DEPARTMENT OF MILITARY  
AND VETERANS AFFAIRS**  
OFFICE OF THE  
ADJUTANT GENERAL  
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Rapid City, South Dakota 57702-8186  
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SD-HRO

29 April 2005

MEMORANDUM FOR All Supervisors, Technicians, and Retirees of the South Dakota Army & Air National Guard

SUBJECT: National Guard Technician Employee's Administrative Claim for Annual Leave Restoration Resulting from the Federal Circuit Court Decision in *Butterbaugh v. Department of Justice*.

1. By statute, 5 U.S.C. § 6323(a)(1), federal employees are granted up to "15 days" of paid leave to attend reserve or National Guard training. Prior to 2000, all federal Agencies (as they had done for decades), had included days on which employees were not scheduled to work (e.g. weekends and holidays) when calculating how much military leave employees took. For example, an employee (with a Monday-Friday workweek) attending reserve training from one Friday through the next would be charged for eight days of military leave, even though the employee was absent for only six workdays from his/her federal civilian job. Thus, the agency measured the grant of military leave by the number of calendar days employees spent in reserve training, rather than by the number of workdays on which they were absent from work. This practice (charging military leave for days otherwise not worked by the federal employee in their civilian job) was declared illegal by the Court.

2. In accordance with OPM Memorandum CPM 2004-19 and NGB Memorandum TN-05-17, the following information and application procedures are provided as background information for your review, consideration, and annual leave restoration claim submission (if applicable) to the Defense Finance and Accounting Service (DFAS) through the South Dakota National Guard Human Resources Office (HRO).

a. In **Butterbaugh v. DOJ, the U.S. Court of Appeals for the Federal Circuit ruled that**, pursuant to 5 U.S.C. 6323, employees were required to take military leave only on days on which they

were required to work and that agencies should have allowed 15 workdays of military leave for reserve training (instead of 15 calendar days, as the language in this section was previously interpreted and applied prior to the court's ruling). Therefore, **the court ruled that agencies should not have charged military leave for nonworkdays that occurred within a period of military duty**

**prior to the change in the military leave law that became effective on December 21, 2000.** On this date, 5 U.S.C. 6323(a) was amended to include a new paragraph (3), which for the first time allowed employees to take military leave on an hourly basis. Following enactment of this amendment, employees were no longer required to take leave for nonworkdays.

b. **Under the Barring Act of 1940 (codified at 31 U.S.C. 3702), a leave claim against the Government must be received within 6 years after the claim accrues and is filed.** Therefore, the South Dakota Human Resource Office may accept claims for crediting additional annual leave for military leave charged on nonworkdays between the date 6 years prior to the claim filing date and 21 December, 2000 (the date of the change in the military leave law).

**Example One:** If an employee filed a claim on 1 April, 2005, the agency must consider any period of military service between 1 April 1999, and 21 December, 2000. **Example Two:** If an employee files a claim on 15 May, 2005, the agency will consider any period of military service between 15 May, 1999, and 21 December, 2000, in crediting annual leave.

c. **Documentation Required:** As in all leave claims, the burden of proof is on the employee. The employee must submit a written request for credit of annual leave and must provide supporting documentation that proves he/she was engaged in active military duty that included non-workdays during the claim period (see paragraph 3). The claim package should also indicate if the employee was on a work schedule other than Monday through Friday. Upon receipt of the request, the HRO will verify the proper and necessary documentation and process the claim to DFAS. Appropriate documentation must include:

- (1) copy of the employee's military orders;
- (2) certificate of attendance or other similar documentation i.e. NGB Form 23A1(Army)
- (3) copy of individuals civilian Leave and earning statement (if they have them).

d. To aid in the process the below flow chart is provided:

- (1) Search own records for Military Orders. For Army Only, if individual does not have orders contact 737-6215 for assistance
- (2) Certificate of Attendance: NGB Form 23A1 (Army). Search own records, if individual does not have NGB 23A1 contact CW3 Dressler at 737-6666.

e. **Current, retired or separated employees may submit a claim. For Current Employees –** Any annual leave credited as a result of an employee's claim must be placed in a restored leave account in accordance with 5 U.S.C. 6304(d)(1)(a) and OPM regulations at 5 CFR 630.306. **The employee must use the restored leave by the end of the leave year in progress, 2 years after the date of restoration.** For example, employees who receive annual leave credit in leave year 2005, the time limit for using the re-credited leave will be the end of leave year 2007. Employees will be credited for 1 day of annual leave for each non-workday occurring within a period of active duty for which he or she was charged military leave. A maximum of 4 days (32 hours) of annual leave may be credited for each fiscal year. **Employees Who Have Retired or Separated –** May file a claim with their former agency and will only receive a lump-sum payment for any annual leave re-credited as a result of that claim, paid at the rate of pay the employee was earning at the time of his or her retirement or separation.

3. We have been instructed to start accepting claims and forward them to DFAS. Since there are on-going discussions and legal actions concerning *Butterbaugh v. DOJ*, the SD HRO will accept claims for forwarding to DFAS encompassing the time-period six years prior to July 24, 2003 (the effective date of the *Butterbaugh* decision). **Therefore you may submit claims for annual leave restoration for military leave used on non-workdays for the period 24 July, 1997** (six year prior to the *Butterbaugh* decision) **to December 21, 2000** (the date of the change in military leave law). Military Technicians (current, retired, separated) may also file a claim for military leave used from 1980 through 21 December 2000. It is suggested that you file two separate claims at the same time, for example 1 May 1999 through 1 May 2005, and 1980 (or whenever you became a technician i.e. 1989) to 1 May 1999. However, due to on-going discussions and litigation over *Butterbaugh v. DOJ* as a result of the Barring Act restrictions, **DFAS will hold and not process these claims until a final resolution is reached and correct claim effective dates are established.** In other words, the final ruling may specify that the Barring Act applies and you may not be able to claim annual leave reimbursement in excess of six years from the date the claim is filed with DFAS.

4. South Dakota Army and Air National Guard current and former technicians (including mobilized individuals) who qualify should use the enclosed application to process annual leave (for military leave used during nonworkdays) restoration claims. Fill out the enclosed application and attach documented proof in accordance with paragraph 2(c) above.

Sign and date the completed application and mail or FAX to:

**Attn: MAJ Deb Bartunek  
Human Resource Office  
2823 West Main Street  
Raid City, SD 57702  
FAX: Comm: (605) 737-6504 / DSN: 747-8504**

5. This memorandum is posted on the SDNG Intranet website under the HRO page and the Internet Website <https://sdguard.ngb.mil/exchange>. Supervisors are encouraged to promote several postings of this memo on unit websites and newsletters to help capture retirees that may be entitled to compensation. The points of contact for leave restoration claims covered by this memorandum are MAJ Deb Bartunek, Deputy HRO at Comm: (605) 732-6659, DSN: 747-8659; FAX: 747-8504; E-mail: [deb.bartunek@sd.ngb.army.mil](mailto:deb.bartunek@sd.ngb.army.mil), or MSgt Steve Abraham at DSN 747-8684, Comm. (605) 737-6684.

FOR THE ADJUTANT GENERAL:

\\SIGNED//  
LESLIE J. WERMERS  
LTC, GS, SDNG  
Human Resource Officer

## Butterbaugh vs. DOJ Claim Form

**From:** *(Please print or type clearly all required information, sign/date the application and attach documentation)*

**Name (First, MI. Last):** \_\_\_\_\_ **SSN:** \_\_\_\_\_

**Branch/Status Info:** **Branch:** **ARNG** **ANG** **Status** (check one):  
 (Check One) ☐ ☐ **Current Tech:** ☐ **Retired:** ☐ **Separated:** ☐

**Address/City/St/Zip:** \_\_\_\_\_

**Phone (Hm/Wk/Cell):** \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**Subject:** Annual Leave Restoration Claim, Re: Butterbaugh v. DOJ Decision

This is a claim for annual leave restoration based on the decision rendered in Butterbaugh v. DOJ. This claim complies with the guidance issued by the South Dakota Human Resources Office which implemented the instructions contained in the OPM letter CPM 2004-19, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated October 13, 2004, and the NGB-J1-TN Memorandum, TN 05-17, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated 11 March 2005.

My claim is for the following dates, during which I was charged Military Leave during non-workdays:

<b>Period of Military Duty:</b> [Format yymmdd – yymmdd i.e.- 990326 – 990412]	<b>Dates of Non-workdays for Which Military Leave was Used During the Stated Period:</b> [Format: yymmdd / yymmdd / yymmdd / etc. i.e.- 990328 / 990403 / 990404 / 990410]	<b># Days Claimed</b> (Maximum 4 Days per Fiscal Year)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____


I have attached the required documentation to support my claim:

*By signing and submitting this claim I declare, under penalty of perjury, that this is a truthful and accurate representation of my claim and that the attached document/s is/are exact, correct and complete copy/s of the original document/s in my possession.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This Section for HRO Use Only:	Date Received In HRO:		HRO Review By (Initials):		Date Forwarded to DFAS:	

## REQUEST FOR DOCUMENTS IN SUPPORT OF BUTTERBAUGH V. DOJ

Name:
SSN:
Branch of Service: Air National Guard / Army National Guard (circle one)
DoD Component: Full Time National Guard Technician
Home Address: _____ _____ _____
Day Time Phone #:
Home Phone #:

1. Please forward to the above address any documents you have for the following period(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The documents will be used as evidence in the restoring of military leave as required for the processing of claims in the Butterbaugh v. DoJ decision.

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**Signature /Date**